(32)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Criminal Appeal No.941 of 2001

Urmila Bai, W/o Meghnath,
Aged about 30 years, Household wife,
R/o Village: Deori, Police Station: Berla,
Distt.: Durg (C.G.)

- Versus -

State of Chhattisgarh,
Through Police Station: Berla,
Distt.: Durg (C.G.)

---

JUDGMENT FOR CONSIDERATION

Sd/-
L.C. BHADOO
Judge

11/8 AUGUST 2003

HON'BLE THE CHIEF JUSTICE

I agree

Sd/-
Chief Justice

POST FOR JUDGMENT ON 18th AUGUST, 2003

Sd/-
L.C. BHADOO
Judge

16/8 AUGUST 2003

(33)

# HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

## Criminal Appeal No.941 of 2001

Urmila Bai, W/o Meghnath,
Aged about 30 years, Household wife,
R/o Village: Deori, Police Station: Berla,
Distt.: Durg (C.G.)

- Versus -

State of Chhattisgarh,
Through Police Station: Berla,
Distt.: Durg (C.G.)

---

Present: -

Shri C.R. Sahu, Advocate: For the appellant

Shri Praveen Das, Panel Lawyer: For the State / respondent

---

Division Bench: **Hon'ble Shri K.H.N. Kuranga, C.J.**
**and Hon'ble Shri L.C. Bhadoo, J.**

## J U D G M E N T

(Delivered on 18th August, 2003)

The following judgment of the Court was delivered by *Justice L.C.Bhadoo*: -

1. Accused/appellant Urmila Bai has preferred this criminal appeal under Section 374 (2) of the Cr.P.C. being aggrieved by the judgment dated 13th August, 2001, passed by the Second Additional Sessions Judge (Fast Track Court), Bemetara, Distt. Durg, in Sessions Trial No.45 of 2001, by which the learned Additional Sessions Judge after holding the accused/appellant guilty of the murder of her sons namely, Ekesh, aged about 2 ½ years and Poshan, aged about 1 ½ years, convicted her under Section 302 of the I.P.C. and sentenced her to undergo imprisonment

for life for each of the murder and also held her guilty of the commission of the offence under Section 309 of the I.P.C. and sentenced her to undergo simple imprisonment for six months. All the three sentences were directed to run concurrently.

2. The prosecution case, in brief, is that on 07.11.2000 at about 8 a.m. in Village: Deori, accused Urmila Bai jumped into a well along with her two sons namely, Ekesh & Poshan. The villagers pulled out the accused from the well when she was alive. However, by the time the two sons of the accused were taken out of the well, they had died.

3. The village Kotwar namely, Mangal Das (PW-8) gave merg intimations to Police Station: Berla, regarding the death of Poshan vide Ex.P-19 and regarding the death of Ekesh vide Ex.P-20. Based on the merg intimations, the In-charge Station House Officer recorded F.I.R. (Ex.P-20) and registered a case under Sections 302 & 309 of the I.P.C. He prepared the site plan (Ex.P-1) and after giving the notices to the Panchas vide Exs.P-2 & P-3, prepared the Panchanamas of the dead bodies of Ekesh vide Ex.P-4 and Poshan vide Ex.P-5. The Patwari namely, Khubhara Prasad Jangde (PW-6) prepared site plan vide Exs.P-10 & P-11. The dead bodies of Poshan & Ekesh were sent for post mortem examination vide Exs.P-21 & P-22. The accused was sent for medical examination vide Ex.P-23. The post mortem report of the dead bodies of Poshan & Ekesh were received vide Exs.P-21 & P-22, respectively. After recording the statements of the witnesses and

after completion of the investigation, the Station House Officer, filed charge sheet before the Court of Judicial Magistrate, first Class, Bemetara, who in turn committed the case to the Court of the Sessions Judge, Durg, from where the Second Additional Sessions Judge (Fast Track Court), Bemetara, received the case on transfer.

4. The learned Additional Sessions Judge after hearing the arguments of the Additional Public Prosecutor and the counsel for the accused and after perusal of the records reached the conclusion that there was sufficient material on record to frame charges under Section 302 of the I.P.C. on two counts for the murders of Ekesh & Poshan and Section 309 of the I.P.C. for attempting to commit suicide against the accused. Accordingly, the learned Additional Sessions Judge framed the charges against the accused and read over and explained the same to the accused. The accused denied the charges and claimed to be tried.

5. The prosecution in order to prove the offences against the accused/ appellant examined ten witnesses. The statement of the accused was recorded under Section 313 of the Cr.P.C. The accused stated that she along with her children fell into the well and she denied the allegation that she jumped into the well. She stated that she has been falsely implicated in the crime and she is innocent.

6. The learned Additional Sessions Judge after hearing the arguments of the Additional Public Prosecutor and the counsel for the accused and

after believing and relying on the prosecution evidence convicted and sentenced the accused/appellant as stated above.

7. We have heard the learned counsel for the accused/appellant and learned Panel Lawyer appearing on behalf of the State/respondent.

8. As far as the involvement of the accused in committing the murder of her own sons namely, Ekesh & Poshan and the charge of she attempting to commit suicide is concerned, the prosecution has tried to prove that the accused/appellant jumped into the well along with her two sons with intention to finish her life and the life of her sons as she was not maintaining good health and was not receiving proper treatment. To prove the above charges, the main witness examined is Tijau (PW-2). He has stated in his evidence that he is the neighbourer of Meghnath, the husband of the accused. Both the sons of Meghnath have died 7-8 months back. He does not know how they had died. On the fateful day at the relevant time he came back after taking bath at the pond at about 8-9 a.m. and when he sat for taking break fast, he heard a sound just like jumping of a monkey. He also saw some clothes near the well. He went towards the well and saw the accused and both the children in the well. He had not seen them jumping into the well. He informed the villagers and the villagers and Kotwar of the village came there. The villagers pulled out the children and Urmila Bai from the well. Seku Ram (PW-1) is the witness to the spot map and the Panchanama of the dead bodies. In para-3 of his evidence, he has stated that he does not

(37)

know how the children and Urmila Bai had fallen into the well. He took out the bodies of the children and also accused Urmila Bai from the well. He had not enquired anything from Urmila Bai as to how she fell in the well. This witness has been declared hostile by the prosecution, as he has not supported the prosecution case. In para-6, he has further stated that it is true that Urmila Bai was sick and she had taken treatment, but she was not cured. He does not know as to whether the husband of Urmila Bai was not getting her treated. He does not know as to whether Urmila Bai first threw the children into the well and thereafter, she jumped into the well.

9. Meghnath (PW-3) is the husband of the accused. He has stated in his evidence that on the fateful day at the relevant time, he was not at his residence and he came after the incident. The two children had died on account of falling into the well. This witness has also been declared hostile. In para-6, he has stated that he enquired from Urmila Bai and she informed him that the children fell into the well while they were playing and she also fell into the well while trying to save them.

10. Kum. Malthi (PW-4) is the daughter of Meghnath. She has also turned hostile. She has stated in her evidence that she does not know how the accused and the children fell into the well.

11. Smt. Laxmi Bai (PW-5) has stated in her evidence that when she was coming after taking bath, she saw that son of the accused Ekesh fell into the well while playing and to save Ekesh, Urmila Bai jumped into the

well along with her younger son Poshan. Thereafter, the villagers came and pulled them out of the well. This witness has also been declared as hostile. In the cross-examination, para-6, she has stated that she does not know the name of the wife of Tijau (PW-2), but she was standing at the gate of her house.

12. Thus, there is not an iota of evidence by which it can be inferred that the accused jumped into the well along with her two sons in order to finish their lives. On the contrary, Meghnath, the husband of the accused has stated in his evidence that on enquiry, Urmila Bai informed him that the children fell into the well while playing. PW-5 Laxmi Bai has also stated in her evidence that when she was coming back after taking bath, she saw that Ekesh had fallen into the well while playing and in order to save him, Urmila Bai jumped into the well along with her younger son.

13. The main witness is Frintan Bai, the wife of Tijau (PW-2) who was standing in front of her house. According to the prosecution, she saw how the accused and children fell into the well, but she has not been examined by the prosecution. It seems that efforts were made by the trial Court to secure her before the Court and examine her, but she could not be served and produced as a witness in the case.

14. The accused/appellant in her statement recorded under Section 313 of the Cr.P.C. has stated that she fell into the well along with her children, which Tijau (PW-2) had seen. Tijau (PW-2) has stated in his evidence

that he had not actually seen how the accused and the children fell into the well.

15. Therefore, there is no evidence in this case to prove the charge against the accused/ appellant. It is unfortunate that the accused has lost her two sons. It is true that evidence has come on record that accused Urmila Bai was sick since last 5-6 months and she was treated also, but she was not fully cured and she was disturbed on account of that. But, merely on this ground no inference can be drawn that she jumped into the well along with her children in order to end her life and that of her children.

16. In a criminal case, heavy burden lies on the prosecution to prove the offence against the accused beyond reasonable doubt. Suspicion, however strong it may be, that cannot take the place of proof. There is a long gap between 'may be true' and 'true'. In the present case, the prosecution has failed to prove the charges levelled against the accused beyond reasonable doubt that she threw her sons into the well to commit their murder and thereafter, jumped into the well to commit suicide.

17. For the foregoing reasons, we are of the opinion that the finding of the trial Court is not based on convincing and legal evidence and the trial Court has not properly appreciated the evidence produced in the case. The trial Court has merely, convicted the accused by drawing the

inference, which is not correct. Therefore, the finding of the trial Court cannot be sustained.

18. In the result, the appeal succeeds and the same is allowed. The convictions and sentences passed against the accused/appellant by the trial Court for the commission of the offences under Sections 302 & 309 of the I.P.C. are set aside and she is acquitted of the said charges. The accused is in jail since 08.11.2000. She be set at liberty forthwith, if not required in any other case.

Sd/-
Chief Justice

Sd/-
L.C. BHADOO
Judge

Soma